



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB651]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from the Sustainable Seas Technology, LLC. If granted, the EFP would authorize the applicant to deploy modified black sea bass pots with Acoustic Subsea Buoy Retrieval Systems (ASBRS) in South Atlantic Federal waters off North Carolina, South Carolina, Georgia, and Florida. The project would examine the potential usefulness of ASBRSs for use in the black sea bass pot gear component for the commercial sector of the snapper-grouper fishery in minimizing impacts to protected species.

DATES: Written comments must be received on or before *[insert date 15 calendar days after date of publication in the **FEDERAL REGISTER**]*.

ADDRESSES: You may submit comments on the application, identified by "NOAA-NMFS-2021-0129" by any of the following

methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2021-0129" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the application and may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/southeast/science-data/black-sea-bass-pot-experimental-retrieval-project-exempted-fishing-permit/>.

FOR FURTHER INFORMATION CONTACT: Frank Helies, 727-824-5305; e-mail: *frank.helies@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

Currently, vertical end lines and buoys, such as those utilized with black sea bass pots in the South Atlantic, present an entanglement risk to the North Atlantic right whale, a species that is listed as endangered under the Endangered Species Act (ESA). Each fall, some right whales travel from their feeding areas in the waters off New England and Canada to the shallow, coastal waters of North Carolina, South Carolina, Georgia, and northeastern Florida. ASBRSS are a type of fishing gear that allows fish traps, including black sea bass pots, buoys, and their retrieval devices to be stored at depth until triggered for retrieval at the surface. These gear systems allow for trap and pot buoys and vertical lines to exist in the water column for minutes instead of hours or days, as they are activated via acoustic release only when fishers are present. As described in the application, the applicant believes that adaptation of ASBRSS or "ropeless" systems for black sea bass pot fishing in the South Atlantic could reduce the risk to these whales and other marine animals

that are subject to entanglements from vertical lines and buoys.

NMFS previously issued an EFP to the applicant through a pilot project for ASBRS research similar to this in 2020 (85 FR 42831; July 15, 2020). That EFP pilot project found a 99 percent black sea bass pot gear retrieval success rate when handled by project personnel.

If granted, the EFP would exempt limited fishing gear testing activities from certain regulations for the black sea bass pot component for the commercial sector of the South Atlantic snapper-grouper fishery, specifically gear identification at 50 CFR 622.177(a)(4), area and seasonal closures at 50 CFR 622.183 (622.183(a)(1)(ii)(E), 622.183(a)(2)(vii)(E), and 622.183(b)(6)), black sea bass pot configuration restrictions and requirements at 50 CFR 622.189 (622.189(b), 622.189(e)(1), and 622.189(g)) and Atlantic large whale gear marking requirements at 50 CFR 229.32 (229.32(c)(1), 229.32(c)(2)(ii), and 229(c)(2)(iv)).

The applicant seeks an EFP to determine the following: if the ASBRS gear would continue to show a greater than 99 percent successful deployment and retrieval rate; if ASBRS gear significantly increases the time and/or expense for gear retrieval and recovery versus the current fishing method such that it might affect profitability; if ASBRS gear significantly increases time and/or expense for the repacking of gear for redeployment versus the current

fishing method such that it might affect profitability; if bycatch rates for the modified black sea bass pot fishing configuration are greater than those for the traditional single pots; and if the harvest of black sea bass in the preferred inshore areas that are currently closed, would still yield enough catch to offset the cost of ASBRS fishing gear and modifications. If granted, the project would allow for expansion of gear testing from the initial pilot project off Georgia to include additional fishers off North Carolina, South Carolina, and Florida during the seasonal black sea bass pot closure to examine basic functionality, reliability, and feasibility of ropeless fishing gear and alternative rigging configurations.

Under the EFP, the applicant would collect data through an ongoing collaborative effort among different ASBRS manufacturers and fishery industry partners. If granted, the EFP would be effective from the date of issuance through August 31, 2024. In addition to this EFP request for exemption from Magnuson-Stevens Act regulations, the applicant would consult with NMFS to ensure the EFP would be consistent with North Atlantic right whale conservation measures currently in place through the ESA and Marine Mammal Protection Act. Fishers participating in this project are assumed to be receiving grant funding and/or self-funding the work. These fishers would be allowed to keep and sell all catch lawfully

harvested by black sea bass pots. The proposed EFP testing area would occur in offshore Federal waters of North Carolina, South Carolina, Georgia, and Florida out to a depth of 65 meters. The inshore water depth for testing in Federal waters would not be less than 20 meters. Sampling would occur from November 15 through April 30 of each year in water depths of 20 to 65 meters. The testing would not occur in any special management zones listed in 50 CFR 622.182 or in the North Atlantic Right Whale Critical Habitat Area.

Up to 11 different black sea bass pot designs would be fished as singles and as four pot trawls in inshore areas. This would be done during the black sea bass pot closure period each year (November 15 through April 30), to compare against control pots fished under the previous EFP to yield data relative to the time expended to retrieve and rebait traditional traps pursuant to the current regulations. Using the ASBRS, the applicant would utilize virtual gear marking of the pots (marking of gear deployment location with chart plotters, GPS, and manufacturer-provided software). The applicant would also evaluate the feasibility of use of various virtual gear marking systems and share the results with fishery management partners.

Participating permitted commercial fishers would deploy experimental gear for up to 10 days each year in supervised field trials and additional unsupervised fishing

trials, not to exceed 2,000 gear hauls per vessel over the length of the EFP, to evaluate the performance of ASBRS with both the experimental and standard black sea bass pot configurations. Each deployment under the EFP would be limited to 35 total pots per vessel, with an average soak time of 90 minutes per configuration. Some overnight sampling would occur for acoustic releases.

EFP Black Sea Bass Pot Configurations

Under the EFP, four regulation-sized pots would be connected together with wire connecting clips or zip ties so that only one ASBRS gear device is needed to retrieve four connected pots. Each pot would have the standard black sea bass pot single entrance and would possess one back panel of 2-inch (5.1-cm) uniform mesh. The connected four traps would test both one and two single entrances (on adjacent sides of single traps to replace the allowable two opposite entrances) to four regulation-sized trap interiors, and would otherwise comply with the requirements for black sea bass pot dimensions and construction in the South Atlantic. This experimental gear design of the four connected pots is not a chevron-style fish trap, it is a design of standard black sea bass pots connected to adjacent standard black sea bass pots. The goal of this modification is to examine ways to reduce procurement and implementation costs associated with the number of required ASBRSs to fish 35 pots.

EFP Gear Markings

Two of the technologies that would be used in the EFP utilize lift bags and buoys and are therefore unable to be line-marked as they do not incorporate line into their design. For the other technologies being tested under the EFP, all buoy lines on ASBRS gear types that use stored line would be marked in accordance with the most recent requirements pursuant to the Atlantic Large Whale Take Reduction Plan and other Federal regulations, and would have weak links with a maximum breaking strength of 600 lb (272 kg), 1,700 lb (771 kg) maximum breaking strength sleeves, and line with a breaking strength of less than 2,200 lb (998 kg).

EFP Buoy Line

Six of the eight currently available ASBRS devices require the use of a line for retrieval that is contained and stored at depth by a line management system. The other two release devices do not use line, but instead, utilize the inflation of either a lift bag or inflatable buoy to pull a lead trap to the surface. The styles of line storage vary with device design and includes square, rectangular, domed, circular, and conical cages, oyster mesh bags, canisters, and spools. These have been successfully used in trials and testing in a variety of active fishing operations in the United States and worldwide.

Four of the ASBRS devices in the EFP require floating

line to return the buoy or buoys to the surface for retrieval. Currently, the average time for appearance of buoys at depths greater than 100 ft (30.5 m) is approximately 3 minutes. Retrieval generally takes less than 2 minutes, which means that any floating line would be at the surface for less than 5 minutes, and during which time the fishing vessel would be within 20-30 ft (6.1-9.1 m) of the line. Two of the release devices do not incorporate line longer than 10 ft (3.1 m) in their design, and two devices use a harness that clips to the pot. The remaining devices use less than 150 ft (45.7 m) of line which would be stowed inside either a bag or on a spool. Sinking line cannot be used for any ASBRS as it would create a negatively buoyant strain on the buoys and not effectively allow for their return to the surface. All of the ASBRSs with a line storage system would need to be attached between the trap and the buoy. If necessary, several of the ASBRSs may also require a small anchor or weight to be attached between the pot and line-storage device or buoy in areas with higher current to keep them from fouling in the pot, as well as to ensure they are not dragged from their intended deployment area. For lift bag and buoy systems, the actual systems would be secured between the pot and the buoy/bag.

NMFS finds the application warrants further consideration based on a preliminary review. Possible

conditions the agency may impose on the permit, if granted, include but are not limited to, a prohibition on conducting fishing gear testing within marine protected areas, marine sanctuaries, special management zones, or areas where they might interfere with managed fisheries without additional authorization. Additionally, NMFS may require special protections for ESA-listed species and designated critical habitat, and may require particular gear markings. A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the appropriate fishery management agencies of the affected states, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, and a determination that the activities to be taken under the EFP are consistent with all applicable laws.

Authority: 16 U.S.C 1801 *et seq.*

Dated: January 11, 2022.

Ngagne Jafnar Gueye,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.